IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.E.N.PATRUDU

WRIT PETITION NO :448 of 2006

-

-

-

Dated: 27th January 2006.

-

Between:

Mrs. Chukka Rachel Deva Varam

..... PETITIONER

AND

The Registrar, A.P.State Consumer Disputes Redressal Commission and another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.E.N.PATRUDU

W.P.NO.448 OF 2006

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue a writ, order or direction in the nature of Mandamus directing the 1st respondent herein to pass orders on the application of the petitioner dated 30-12-2005 forwarded to the 2nd respondent for reappointment as Lady Member in District Consumer Forum Guntur as per Notification Roc. No. 32/APCDRC/ ADMN/ 2005, dated 8-12-2005 and pass such other order or orders in the circumstances of the case."

The petitioner, a lady with apparently very impressive academic record, as can be seen from the Paragraph No.3 of the affidavit filed in support of the petition, was practicing as an advocate in the District Court, Guntur for over fourteen years. She was appointed as a Member of the District Consumer Forum, Guntur, pursuant to the notification issued for the said purpose on 29-01-2001. She assumed office on 04-02-2001 for a period of five years.

While the matter stood thus, the respondents issued notification dated 08-12-2005 inviting applications to fill up vacancies for the post of Members of various District Consumer Fora, indicated in the said notification. According to the said notification, two Members of the District Consumer Forum, Guntur, would vacate the office in the year 2006 and one of the two being the petitioner herein, would vacate the office on 04-02-2006. The notification invited applications from the eligible interested persons, which applications are to reach the 1st respondent on or before 18-01-2006.

Section 10 of the Consumer Protection Act, 1986, deals with the composition

of a District Forum. “District Forum” is defined under Section 2 (h) of the said Act and it means Consumer Disputes Redressal Forum, established under Clause (a) of Section 9. Section 10 stipulates that each such District Forum should consist of a person, who is, or has been, or is qualified to be a District Judge, to act as the President of the Forum and two members of whom one should be a woman. It further prescribes the qualifications required to be possessed by those persons, who are to be appointed as the Members of the District Forum. It also prescribes certain disqualifications. Sub-section (2) prescribes a tenure of five years, subject to the limitation that a Member so appointed shall not continue in office beyond the age of sixty five years. Proviso to sub-section (2) categorically declares that a Member, once appointed, shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier.

The Proviso to Section 10(2)(a) reads as follows:

> “Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause(b) of Sub-section(1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee.”

The State of Andhra Pradesh made rules called the A.P. State Consumer Protection Rules 1987, under G.O.Ms.No.473. It appears, initially the Act did not specify the procedure by which either the President or the Members of such District Fora are to be chosen, however, by an amendment Act 50 of 1993, sub-section 1(a) was inserted in Section 10, which stipulates that every appointment contemplated under Section 10, shall be made by the State Government on the recommendation of a Selection Committee, consisting of various authorities indicated in the said amendment. Even that amendment did not specify either the procedure or the modalities required to be followed by the Selection Committee while making the selections. The State of Andhra Pradesh, therefore, thought it fit to amend the rules framed under G.O.Ms.No.473, referred to earlier. The said amendment was carried under G.O.Ms.No.58, Consumer Affairs, Food and Civil Supplies (CS.III) Department dated 13-05-2005. By the said amendment, Rule-6(a) is newly inserted into the 1987 Rules. The other details of the Rules may not be necessary for the present purpose, except to state that under sub-rule 5 of the newly introduced rule, a written

examination is prescribed to enable the Selection Committee to take a decision in the matter of appointments. It also stipulates that the three top ranking candidates in the written examination are required to be interviewed by the Selection Committee and select, obviously, the best of them. It is in the background of the abovementioned amended rule, the notification dated 08-12-2005 is to be examined.

We have already noticed that the notification prescribes last date for the receipt of the applications as 18-01-2006. The notification specifically declares that the existing Members of the various District Fora, mentioned in it, whose tenure would expire and who are within the age of 65 years, if they seek a fresh appointment, can also make an application through proper channel. Obviously, such an application is also to reach the 1st respondent on or before 18-01-2006.

From the counter-affidavit, we find that, admittedly, the application of the petitioner was received by the 1st respondent on 12-01-2006. Strangely, the 1st respondent makes a statement at Paragraph No.6 of the counter-affidavit " **... Thus as on the date of the issuance of the notification no application from the writ petitioner seeking reappointment.**"

We must express our inability to understand the legal import of the abovementioned statement. It is beyond our comprehension as to how an application can be made even before the notification is issued. At any rate, on the admission of the 1st respondent in his counter-affidavit that the petitioner's application was with the 1st respondent at least by 12-01-2006, it is clear that the petitioner applied within time. Therefore, necessarily the application of the petitioner must be considered along with the cases of the three successful candidates, who have gone through the process of the selection as contemplated under the amended Rule-6(a).

Though the 1st respondent does not clearly explain in Paragraph No.5 of the counter-affidavit, an attempt is made to create a distinction between re-appointment and fresh appointment. Paragraph No.5 of the counter-affidavit reads as follows:

> " As regards the averments in paras 6 and 7 of the affidavit of the writ petitioner it is no doubt true that writ petitioner is eligible for reappointment or for fresh appointment basing on her performance, punctuality, integrity and efficiency but not as a matter of course or right."

To a specific query from the Court, the Government Pleader appearing on behalf of the respondents submitted that a sitting Member of a District Forum is entitled either for a re-appointment on the basis of the performance of such a candidate without reference to a written examination or such a Member is entitled for a fresh appointment, if the Member so chooses to go through the selection process contemplated under Rule-6(a). Though no such distinction is apparent either from the Act or Rules, such is the understanding of the respondents. If such an understanding is permitted, it can result in a situation, in a given case, that an existing Member, who seeks a fresh appointment, as per the understanding of the respondent indicated above, whose performance was otherwise undesirable for continuation of that person, would still be eligible on the basis of his/her performance in the examination contemplated under Rule-6(a), to be come a Member; a result, which is wholly undesirable in the context and in the backdrop of the purpose sought to be achieved by the Act. The artificial distinction sought to be drawn between re-appointment and fresh appointment, in the context of a sitting member, in our view, is wholly uncalled for and without any basis in law. The cases of the eligible sitting Members of the District Fora for continuation further, can only be made on the basis of the assessment of their past performance and such an assessment must necessarily be made simultaneously with the assessment of the suitability of the candidates, who go through the process of selection under the amended Rule-6(a).

The writ petition is therefore, disposed of directing the respondents to consider the case of the writ petitioner along with the successful candidates, who appeared for the examination, in the light of the principles indicated above, but in the circumstances, there shall be no order as to costs.

J.Chelameswar, J

M.E.N.Patrudu, J

27th January 2006

mrk